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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,406	03/29/2006	Bernadette Verneau	065691-0397	3436
23428 7590 02/05/2010 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007				
EXAMINER				
MI, QIUWEN				
ART UNIT		PAPER NUMBER		
1655				
MAIL DATE		DELIVERY MODE		
02/05/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/542,406

**Applicant(s)**

VERNEAU, BERNADETTE

**Examiner**

QIUWEN MI

**Art Unit**

1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 14-23 and 26-34 is/are pending in the application.
- 4a) Of the above claim(s) 15, 16, 23 and 26-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 14, 17-22, 33 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **CONTINUED EXAMINATIONS**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/22/2009 has been entered.

Applicant's amendment in the reply filed on 12/22/2009 is acknowledged, with the cancellation of Claims 2-13, 24, 25, and 35-36. Claims 1, and 14-23, and 26-34 are pending. Claims 15, 16, 23, and 26-32 are withdrawn as they are directed toward a non-elected invention groups or species. **Claims 1, 14, 17-22, 33, and 34 are examined on the merits.**

Any rejection that is not reiterated is hereby withdrawn.

The new claim amendment in claim 1 requires the presence of both 5% beeswax and 5% glycerol palmitostearate, wherein unexpected results is shown in the specification, thus the 103 obviousness rejection is withdrawn.

### **Claim Objections**

Claims 14, 22, and 33 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 14 recites “The composition of claim 1, wherein the lipophilic additive is selected from polyethylene glycol, beeswax, candelilla wax, carnauba wax, and glycerol palmitostearate” (lines 1-2). However, the new claim limitation of claim 1 “wherein the composition comprises beeswax and glycerol palmitostearate, wherein the weight ratio of beeswax represents approximately 5% by weight based on the total composition, and wherein the weight ratio of glycerol palmitostearate represents approximately 5% by weight based on the total composition (lines 10-14)” requires the presence of both beeswax and glycerol palmitostearate, thus claim 14 does not further limit claim 1.

Claim 33 recites “The composition of claim 1, wherein the lipophilic additive amounts to 8 to 15% by weight of the composition” (lines 1-2). However, the new claim limitation of claim 1 requires the presence of both 5% beeswax and 5% glycerol palmitostearate, which makes the weight percentage of lipophilic additives at least 10%, thus claim 33 does not further limit claim 1.

Claim 22 recites “The composition of claim 20, wherein at least one among the other physiologically active components is a plant or a plant extract selected from among green tea, the alga *Ascophyllum nodosum*, mate tea, guarana, ephedra or citrus aurantium, as well as their mixtures”. It is redundant to recite “among” at line 3, and there is no antecedent basis for “the alga *Ascophyllum nodosum*” at line 3. Applicant is suggested to overcome the objection by reciting “The composition of claim 20, wherein at least one among the other physiologically active components is a plant or a plant extract selected from green tea, alga *Ascophyllum nodosum*, mate tea, guarana, ephedra, citrus aurantium, and the mixtures thereof”.

**Claim Rejections –35 USC § 112, 2<sup>nd</sup>**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 14, 17-22, 33, and 34 are newly rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, Applicant added the new claim limitation “wherein the composition comprises beeswax and glycerol palmitostearate, wherein the weight ratio of beeswax represents approximately 5% by weight based on the total composition, and wherein the weight ratio of glycerol palmitostearate represents approximately 5% by weight based on the total composition” at lines 10-14, and the new limitation makes claim 1 very confusing as claim 1 (lines 5-9) also recites “at least one lipophilic additive selected from polyethylene glycol, beeswax, candelilla wax, carnauba wax, polyethylene oxide wax, petroleum wax, and glycerol palmitostearate, wherein said at least one lipophilic additive is solid or pasty at room temperature, the lipophilic additive amounting to 5 to 20% by weight of the composition, and wherein the composition is a dosage form chosen between soft or hard capsules”. First of all, it is not clear whether the new claim limitation is in addition of the “lipophilic additive” element at lines 5-9 or not. For instance, the new claim limitation requires the presence of both beeswax and glycerol palmitostearate in the composition, which requires at least two lipophilic additives, instead of “at least one lipophilic additive” as recited at lines 5-6. Secondly, the presence of 5% beeswax and 5% glycerol palmitostearate makes the weight percentage of lipophilic additives at least 10%,

which is contradicting with the “5-20% by weight” of lipophilic additive as recited at line 9, as the weight percentage of lipophilic additives can't be 5-9%. Further more, in the new claim limitation, the phrase “weight ratio” usually refers to the relative amount of two components, for instance, the composition comprises 5% beeswax and 5% glycerol palmitostearate, and the weight ratio of beeswax and glycerol palmitostearate is 1:1, thus it is confusing to recite “the weight ratio of beeswax represents approximately 5% by weight based on the total composition”.

Claim 22 recites “the alga *Ascophyllum nodosum*”, and there is insufficient antecedent basis for that limitation in the claims, as there is no recitation of “*Ascophyllum nodosum*” in any other claims.

Therefore, the metes and bounds of claims are rendered vague and indefinite. The lack of clarity renders the claims very confusing and ambiguous since the resulting claims do not clearly set forth the metes and bounds of the patent protection desired.

All other cited claims depend directly or indirectly from rejected claims and are, therefore, also, rejected under U.S.C. 112, second paragraph for the reasons set forth above.

### **Conclusion**

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qiuwen Mi whose telephone number is 571-272-5984. The examiner can normally be reached on 8 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Qiwen Mi/

Examiner, Art Unit 1655